



[BILLING CODE 3190-W2-P]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS431]

WTO Dispute Settlement Proceeding Regarding China – Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (“USTR”) is providing notice that on March 13, 2012, in accordance with the *Marrakesh Agreement Establishing the World Trade Organization* (“WTO Agreement”), the United States requested consultations regarding restraints on the export from China of various forms of rare earths, tungsten and molybdenum (the “materials”). That request may be found at www.wto.org contained in a document designated as WT/DS431/1. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before April 30, 2012 to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically to www.regulations.gov, docket number USTR 2012-0005. If you are unable to provide submissions by www.regulations.gov, please contact Sandy McKinzy at (202) 395-9483 to arrange for an alternative method of transmission.

If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395-3640.

FOR FURTHER INFORMATION CONTACT: Jared Wessel, Assistant General Counsel, or Ben Kostrzewa, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508, (202) 395-3150.

SUPPLEMENTARY INFORMATION: USTR is providing notice that consultations have been requested pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (“DSU”). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the United States

On March 13, 2012, the United States requested consultations regarding China’s restraints on the export from China of various forms of rare earths (“rare earths” include, but are not limited to, items falling under the following eight-digit HS numbers identified in the Announcement No. 27 Issuing the 2012 Tariff Implementation Program (State Council Customs Tariff Commission, shuiweihui, No. 27, issued December 9, 2011, effective January 1, 2012) (hereinafter, the “*2012 Tariff Implementation Program*”): 25309020, 26122000, 28053011, 28053012, 28053013, 28053014, 28053015, 28053016, 28053017, 28053019, 28053021, 28053029, 28461010,

28461020, 28461030, 28461090, 28469011, 28469012, 28469013, 28469014, 28469015, 28469016, 28469017, 28469019, 28469021, 28469022, 28469023, 28469024, 28469025, 28469026, 28469028, 28469029, 28469031, 28469032, 28469033, 28469034, 28469035, 28469036, 28469039, 28469041, 28469042, 28469043, 28469044, 28469045, 28469046, 28469048, 28469049, 28469091, 28469092, 28469093, 28469094, 28469095, 28469096, 28469099, 72029911, 72029919, 72029991, 72029999, and 72051000. Forms of rare earths also include, but are not limited to, items falling under the following 10-digit Chinese Customs Commodity Codes (“CCC Codes”), as identified in the Notice on Issuing the “2012 Export Licensing Management Commodities List,” Ministry of Commerce and General Administration of Customs Notice No. 98 (December 30, 2011), (hereinafter the “*2012 Export Licensing Management Commodities List*”): 2530902010, 2530902090, 2612200000, 2805301100, 2805301200, 2805301300, 2805301400, 2805301510, 2805301590, 2805301600, 2805301700, 2805301913, 2805301914, 2805301915, 2805301990, 2805302110, 2805302190, 2805302910, 2805302990, 2846101000, 2846102000, 2846103000, 2846109010, 2846109090, 2846901100, 2846901200, 2846901300, 2846901400, 2846901500, 2846901600, 2846901700, 2846901920, 2846901930, 2846901940, 2846901970, 2846901980, 2846901991, 2846901992, 2846901999, 2846902100, 2846902200, 2846902300, 2846902400, 2846902500, 2846902600, 2846902810, 2846902890, 2846902900, 2846903100, 2846903200, 2846903300, 2846903400, 2846903500, 2846903600, 2846903900, 2846904100, 2846904200, 2846904300, 2846904400, 2846904500, 2846904600, 2846904810, 2846904890, 2846904900, 2846909100, 2846909200, 2846909300, 2846909400, 2846909500, 2846909600, 2846909910, 2846909990, 7202991100, 7202991200, 7202991900, 7202999110, 7202999191, 7202999199, and 7202999900. Forms of rare earths may also include the following CCC Codes listed in the Announcement Regarding Export

Declarations for Rare Earth Products, (General Administration of Customs, No. 37, issued May 27, 2011, effective June 1, 2011): 25309020, 26122000, 280530, 2846, 32065000, 36069011, 36069019, 38249099, 72029911, 72029912, 72029919, 72029991, 72029999, 72044900, 72051000, 72052100, and 85051110); tungsten (“tungsten” includes, but is not limited to, items falling under the following eight-digit HS numbers, as identified in the *2012 Tariff Implementation Program*: 26209910, 28259011, 28259012, 28259019, 28418010, 28418020, 28418030, 28418040, 28418090, 28499020, 72028010, 72028020, 81011000, 81019400, and 81019700. Forms of tungsten also include, but are not limited to, items falling under the following 10-digit CCC Codes, as identified in the *2012 Export Licensing Management Commodities List*: 2611000000, 2620991000, 2825901100, 2825901200, 2825901910, 2841801000, 2841802000, 2841803000, 2841804000, 2849902000, 3824300010, 7202801000, 7202802000, 8101100010, 8101100090, 8101940000, and 8101970000); and molybdenum (“molybdenum” includes, but is not limited to, items falling under the following eight-digit HS numbers, as identified in the *2012 Tariff Implementation Program*: 26131000, 26139000, 28257000, 28417010, 28417090, 72027000, 81021000, 81029400, 81029700. Forms of molybdenum also include, but are not limited to, items falling under the following 10-digit CCC Codes, as identified in the *2012 Export Licensing Management Commodities List*: 2613100000, 2613900000, 2825700000, 2841701000, 2841709000, 7202700000, 8102100000, 8102940000, 8102970000, and 8102990000).

These export restraints include: export duties on the materials; quantitative restrictions such as quotas on the export of the materials; additional requirements and procedures in connection with the administration of the quantitative restrictions on the export of the materials, including, but

not limited to, fees and formalities, restrictions on the right to export such as prior export experience requirements and minimum capital requirements, and other conditions that appear to treat foreign-invested entities differently from domestic entities; licensing requirements on the export of the materials, including in connection with the administration of the quantitative restrictions imposed on the materials; and a minimum export price system for the export of the materials. In addition, China appears to administer these export restraints and the requirements and procedures in connection with the export restraints in a manner that is not uniform, impartial, reasonable, or transparent. It further appears that China imposes and administers these export restraints through measures that are not published.

USTR believes that these export restraints and China's administration of and manner of imposing these export restraints are inconsistent with China's obligations under Articles VII, VIII, X, and XI of the *General Agreement on Tariffs and Trade 1994*; paragraphs 2(A)2, 2(C)1, 5.1, 5.2, 7.2, 8.2 and 11.3 of Part I of the *Protocol on the Accession of the People's Republic of China* ("Accession Protocol"); and the provisions of paragraph 1.2 of Part I of the Accession Protocol (which incorporates commitments in paragraphs 83, 84, 162, and 165 of the *Report of the Working Party on the Accession of China*).

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to www.regulations.gov docket number USTR 2012-0005. If you are unable to provide submissions by www.regulations.gov,

please contact Sandy McKinzy at (202) 395-9483 to arrange for an alternative method of transmission.

To submit comments via www.regulations.gov, enter docket number USTR 2012-0005 on the home page and click “search”. The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting “Notice” under “Document Type” on the left side of the search-results page, and click on the link entitled “Submit a Comment”. (For further information on using the www.regulations.gov website, please consult the resources provided on the website by clicking on “How to Use This Site” on the left side of the home page.)

The www.regulations.gov site provides the option of providing comments by filling in a “Type Comments” field, or by attaching a document using an “upload file” field. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type “See attached” in the “Type Comments” field.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked “BUSINESS CONFIDENTIAL” at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395-3640. A non-confidential summary of the confidential information must

be submitted to www.regulations.gov. The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. § 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter –

- (1) Must clearly so designate the information or advice;
- (2) Must clearly mark the material as “SUBMITTED IN CONFIDENCE” at the top and bottom of the cover page and each succeeding page; and
- (3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to www.regulations.gov. The non-confidential summary will be placed in the docket and open to public inspection.

Pursuant to section 127(e) of the Uruguay Round Agreements Act (19 U.S.C. § 3537(e)), USTR will maintain a docket on this dispute settlement proceeding accessible to the public at www.regulations.gov, docket number USTR 2012-0005. The public file will include non-confidential comments received by USTR from the public with respect to the dispute. If a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions, received from other participants in the dispute, will be made available to the public on USTR’s website at www.ustr.gov, and the report of the panel, and, if applicable, the report of the

Appellate Body, will be available on the website of the World Trade Organization,
www.wto.org. Comments open to public inspection may be viewed on the www.regulations.gov
website.

Bradford Ward,
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for Monitoring and Enforcement

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